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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 14th January 2005

No. 415—li/1(B)-103/2003-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th December 2004 in Industrial Dispute Case No. 74 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Bhubaneswar Development Authority, Bhubaneswar and their workmen represented through B. D. A. Workers Association, Bhubaneswar was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 74 OF 2003

Dated the 30th December 2004

Present :

Shri P. K. Sahoo, o.s.j.s. (Jr. Br.)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Management of .. First Party—Management
Bhubaneswar Development Authority
Bhubaneswar.

And

Their workmen represented through .. Second Party—Workmen
B. D. A. Workers Association
Bhubaneswar.

Appearances :

For the First Party—Management .. Shri L. K. Mohapatra

For the Second Party—Workmen .. Shri N. K. Mohanty

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo No. 12075(5)-L.E., dated the 17th December 2003 for adjudication and Award.

“Whether the action of the management of Bhubaneswar Development Authority, Bhubaneswar in not regularising the services of 113 numbers of N. M. R. / D. L. R. / *ad hoc* workmen (list enclosed) is legal and/or justified ? If not, to what relief they are entitled ?”

GRADATION LIST OF D. L. R. EMPLOYEES B. D. A.

Sl. No.	Name	Designation	Section/ Division	Date of joining	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
1	Shri Pravakar Jena	Mate	Division-II	1-4-1990	
2	Shri Ganesh Ch. Jena	Fountain Operator	Division-III	1-4-1990	
3	Shri Ashok Ku. Das	Pump Driver	Division-III	1-4-1990	
4	Shri Ganeswar Swain	Pump Driver	Division-III	1-4-1990	
5	Shri Mangu Pradhan	Mate	Division-II	1-5-1990	
6	Shri Pramod Ku. Jena	Mate	Division-II	1-5-1990	
7	Shri Khaleswar Biswal	Asst. Pump Driver	Division-III	1-5-1990	
8	Shri Jagannath Harichandan	Asst. Pump Driver	Division-III	1-5-1990	
9	Shri Pramod Ku. Sahoo	Pump Driver	Division-III	1-5-1990	
10	Shri Krupasindhu Panda	Pump Driver	Division-III	1-5-1990	
11	Shri Parsuram Naik	P. L.	Hort.	3-5-1990	
12	Shri Ajaya Ku. Mohanty	Mate	Division-II	7-5-1990	
13	Shri Sanjib Lochan Patnaik	Fountain Operator	Division-III	12-5-1990	
14	Shri Gadadhar Patra	P. L.	Hort.	16-5-1990	
15	Shri Bijaya Ku. Pattnaik	P. L.	Hort.	18-5-1990	
16	Shri Rabinarayan Parida	Mate	Division-II	1-6-1990	
17	Shri Udayanath Sharma	Fitter Mistry	Division-III	1-6-1990	
18	Shri Prafulla Ku. Sahoo	Pump Driver	Division-III	1-6-1990	
19	Shri Prafulla Ku. Samantray	P. L.	Hort.	1-6-1990	
20	Shri Sarbeswar Mohanty	P. L.	Main Office	2-6-1990	
21	Shri Dwijabar Sahoo	Clerk	Division-II	1-7-1990	
22	Shri Haribandhu Sahoo	Mate	Division-II	1-7-1990	

(1)	(2)	(3)	(4)	(5)	(6)
23	Shri Ajaya Ku. Biswal	Mate	Division-II	1-7-1990	
24	Shri Anil Ku. Mohanty	Pump Driver	Division-III	1-7-1990	
25	Shri Rasmikanta Mohanty	Elect. Helper	Division-II	1-7-1990	
26	Shri Narayan Nayak	Asst. Pump Driver	Division-III	10-7-1990	
27	Shri Gouranga Ch. Das	Mate	Division-III	10-7-1990	
28	Shri Prasanta Ku. Pradhan	Mate	Division-II	11-7-1990	
29	Shri Laxmi Narayan Sahoo	Pump Helper	Division-II	1-8-1990	
30	Shri Gopabandhu Dixit	Mate	Division-III	1-8-1990	
31	Shri K. C. Mohanty	Electrician	Division-I	1-3-1991	
32	Shri Basanta Ku. Behera	Asst. Pump Driver	Division-III	1-4-1991	
33	Shri Bhagirathi Mangaraj	Asst. Pump Driver	Division-II	1-5-1991	
34	Shri Dhobei Parida	Electrician	Division-II	1-6-1991	
35	Shri Hemanta Ku. Nayak	Asst. Pump Driver	Division-III	1-6-1991	
36	Shri Manoranjan Das	Mate	Division-II	1-6-1991	
37	Shri R. C. Parida	Wireman	Division-I	1-8-1991	
38	Shri S. K. Rath	Lift Operator	Division-I	1-9-1991	
39	Shri Sridhar Rout	Fitter Mistry	Division-III	1-9-1991	
40	Shri Padma Ch. Parida	Mate	Division-I	1-12-1991	
41	Shri Aditya Ku. Nayak	Mate	Division-I	1-1-1992	
42	Shri Gandharba Dehuri	Mate	Division-III	1-1-1992	
43	Shri Purna Ch. Das	Mate	Division-III	1-1-1992	
44	Shri M. I. Baig	Lift Operator	Division-II	1-2-1992	
45	S. Y. Ahmed	Electrician	Division-II	1-2-1992	
46	Shri Raghunath Mohanty	Asst. Pump Driver	Division-III	1-2-1992	
47	Shri Sunil Ku. Mohanty	Lift Operator	Division-II	1-3-1992	
48	Shri Bibhutibhusan Biswal	Mate	Division-III	1-3-1992	
49	Shri Satrugna Das	Pump Operator	Division-III	6-4-1992	
50	Shri Nakula Rout	Fitter	Division-I	1-5-1992	
51	Shri Balakrushna Pradhan	Elect. Helper	Division-II	1-5-1992	
52	Shri Rasananda Pradhan	Asst. Pump Driver	Division-III	1-5-1992	
53	Shri G. Kulananda Sahoo	Mate	Division-II	1-5-1992	
54	Shri Gayadhar Sahoo	Mate	Division-II	1-6-1992	
55	Shri Manoranjan Pal	Clerk	Division-II	1-7-1992	
56	Shri Duryodhan Sahoo	Pump Driver	Division-III	1-7-1992	
57	Shri Dhanajaya Parida	Mate	Division-III	1-7-1992	

(1)	(2)	(3)	(4)	(5)	(6)
58	Shri Bijaya Ku. Sahoo	Mate	Division-II	1-7-1992	
59	Shri Khetrabasi Biswal	Mate	Division-II	1-8-1992	
60	Shri Sanjib Bihari Das	Lift Operator	Division-II	1-8-1992	
61	Shri Pradip Ku. Sahu	Mate	Division-II	1-9-1992	
62	Shri Golak Ch. Sutar	Mate	Division-II	1-11-1992	
63	Shri Antaryami Padhi	Asst. Pump Driver	Division-III	1-11-1992	
64	Shri Arun Ku. Mishra	Asst. Pump Driver	Division-III	15-12-1992	
65	Shri Rajkishorenath Sharma	Asst. Pump Driver	Division-III	15-12-1992	
66	Shri Sunakar Sahoo	Mate	Division-II	1-1-1993	
67	Shri Niranjana Routray	Mate	Division-II	1-1-1993	
68	Shri Ajaya Ku. Sahoo	Mate	Division-II	1-1-1993	
69	Shri Premananda Tripathy	Asst. Pump Driver	Division-III	1-2-1993	
70	Shri Rajaram Panda	Asst. Pump Driver	Division-III	17-2-1993	
71	Shri Bhagaban Nayak	Mate	Division-II	1-3-1993	
72	Miss Archanarani Patnaik	Typist	Main Office	23-3-1993	
73	Shri Baishnab Ch. Das	Mate	Division-II	1-4-1993	
74	Shri Akshaya Ku. Dixit	Watchman	Division-II	1-4-1993	
75	Shri Rajkishore Palatasingh	Mate	Division-II	1-4-1993	
76	Shri Prasanna Ku. Hota	Mate	Division-II	1-4-1993	
77	Shri Tuna Kadamsingh	Electrician	Division-II	1-4-1993	
78	Shri Brajamohan Panda	Mate	Division-II	1-4-1993	
79	Shri Rabindranath Jena	Mate	Division-II	1-4-1993	
80	Shri Rabindranath Muduli	Mate	Division-II	1-4-1993	
81	Shri Ramesh Ch. Nanda	Elect. Helper	Division-II	1-4-1993	
82	Shri Sadananda Parida	Elect. Helper	Division-II	1-5-1993	
83	Shri Pitambar Mohapatra	Mate	Division-II	1-5-1993	
84	Shri Lalmohan Pattanaik	Helper	Division-III	1-5-1993	
85	Shri Pradip Ku. Swain	Mate	Division-II	1-6-1993	
86	Shri Bhagirathi Barik	Fitter Mistry	Division-III	1-6-1993	
87	Shri Rasmiranjan Padhi	Mate	Division-III	1-7-1993	
88	Shri Pradip Ku. Mohapatra	Watchman	Division-II	1-8-1993	
89	Shri Balaram Panigrahi	Elect. Helper	Division-III	1-8-1993	
90	Shri Sashibhusan Makadam	Mate	Division-II	1-10-1993	
91	Shri Maheswar Das	Mate	Division-II	1-10-1993	

(1)	(2)	(3)	(4)	(5)	(6)
92	Shri Yudhistir Mahakuda	Mate	Division-II	1-10-1993	
93	Shri Suresh Ch. Nayak	Mate	Division-I	1-10-1993	
94	Shri Abhiram Jena	Mate	Division-II	1-10-1993	
95	Shri Ajaya Kumar Khuntia	Bill Clerk	Division-III	1-11-1993	
96	Shri Benudhar Behera	Mate	Division-II	1-12-1993	
97	Shri Pravakar Behera	Mate	Division-II	1-12-1993	
98	Shri Prafulla Ku. Patra	Pump Helper	Division-III	1-12-1993	
99	Smt. Kuni Das	P. L.	Hort. Sec.	21-4-1994	
100	Shri Prasanna Ku. Das	Asst.	Main Office	26-7-1994	
101	Smt. Sasmita Rout	Draftsman	Main Office	28-7-1994	
102	Shri Kailash Ch. Das	Asst.	Main Office	3-8-1994	
103	Smt. Puspanjali Panda	Steno-cum-Typist	Division-II	26-8-1994	
104	Shri Bijaya Ku. Das	Mate	Division-II	1-9-1994	
105	Shri Ranjit Parida	Mate	Division-II	1-3-1995	
106	Smt. Tapasi Kar	Diarist	Main Office	1-11-1995	
107	Shri D. D. Pradhan	Electrician	Division-I	1-5-1996	
108	Shri Kashinath Nayak	Drawing Attendant	Main Office	25-8-1997 (S.C.)	
109	Shri Gunanidhi Patra	Asst.	Main Office	28-11-1997 (P. H.)	
110	Shri Anil Ku. Sethi	Asst.	Main Office	8-10-1999 (S.C.)	
111	Shri Sachidananda Bhakta	Peon	Main Office	5-11-1999	
				Absconded	
112	Shri C. Medara	Peon	Division-III	7-1-2000 (S.C.)	
113	Shri Hrushikesh Naik	Peon	Main Office	25-1-2000 (S.T.)	

3. All the 113 workmen represented through Bhubaneswar Development Authority Workers Association under the present reference have challenged the legality and justifiability of the action of the Management of Bhubaneswar Development Authority, Bhubaneswar (in short the management) in not regularising their services. Accordingly the General Secretary of the Bhubaneswar Development Authority Workers Association has filed statement of claim. According to the workmen, the management (Bhubaneswar Development Authority) was established in the year 1981 under the provisions of the Orissa Development Act to carry out the developmental activities and various other functions entrusted under the said Act. The management in order to carry out its multifarious functions and activities engaged them (workmen) in both Class-III and Class-IV job. Although they have been rendering continuous uninterrupted service for about 10 to 15 years but the management till date has not regularised their services. It is categorically averred that the same identical issue involved earlier has already been decided by the Industrial Tribunal, Bhubaneswar in Industrial Disputes Case

No. 2 of 1988. In the said Award it has been observed that the employees who have completed more than one year of continuous service under the management would be made regular with all service benefits. Consequent upon the Award passed in the Industrial Disputes Case No. 2 of 1988, the management entered into a settlement with the Employees Union representing the workmen on the 29th April 1991 wherein it was agreed that the employees who have rendered five years of service under the management would be regularised and accordingly 270 employees were made regular by the management. By virtue of the aforesaid agreement the process of regularisation continued but all on a sudden the management stopped the implementation of the said agreement for which there was serious resentment among the employees consequent upon which, a minutes of discussion was held between the management and the workers union. They both arrived at a settlement which was signed on the 21st December 1993. The terms of settlement with regard to the regularisation of service of N. M. R. / D. L. R. workers were also approved in the 50th Board Meeting of the management and accordingly 480 D. L. R. workers were made regular only leaving the present set of 113 workmen. Even the management regularised the services of 9 employees in the year 1994 although they had not completed five years of service but subsequently they were reverted to their previous post of D. L. R. in the year 1998. Such above irregularity committed by the management in reverting 9 (Nine) regular employees to the position of D. L. R. was also a subject matter of challenge before the Hon'ble High Court of Orissa, Cuttack in O. J. C. No. 7083 of 1998. The Hon'ble Court after careful consideration of the matter directed the management to treat the nine workers as regular employees as they had completed five years of service. Their regularisation was done pursuant to the decision of 83rd Board Meeting of the management though they were junior to other non-regular workmen involved in the present proceeding. According to the workmen, the management having not followed the terms of settlement and principles approved and adopted in Board Meeting, direction of the Hon'ble Court and Industrial Tribunal, the management being a public authority made a clear departure of the principle of equity and fairplay as a result of which the present workmen were deprived of their legitimate claim from being regularised under the management. Such action of the management being illegal and unfair has given rise to the present terms of reference. While challenging the action of the management the workmen have now prayed for regularisation of their services under the management from the date they have completed five years of service along with other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workmen *inter alia* stated that due to decreasing of workload and closure of different work projects and Engineering Divisions it is too difficult on the part of the management to regularise the services of the concerned workmen. While admitting the regularisation of the services of 791 employees consequent upon the Award passed in Industrial Disputes Case No. 2 of 1988 the management has categorically averred that at the time of regularisation of said N. M. R. employees the reservation under the O. R. V. Act was not properly followed for which not only the Scheduled Caste and Scheduled Tribe Development Department but also National Commission for Scheduled Caste and Scheduled Tribe frequently raised strong objection for deviation of the Act. In order to maintain the roster point, the Bhubaneswar Development Authority made a special drive for Scheduled Caste and Scheduled

Tribe categories and appointed 21 numbers of said category of employees in the year 1998. But due to short fall in the workload in the later years they were also found to be surplus in comparison to the workload. In such premises the regularisation of the services of the concerned workmen under the special drive will definitely cause unnecessary increase in staff strength with heavy financial burden on the management. Besides, due to closure of temporary casual works and due to shortfall of workload day by day it will be not practicable on the part of the management to retain those workmen by regularising their services, as was done previously consequent upon the Award passed in Industrial Disputes Case No. 2 of 1988. But in the alternative the management may consider the case of the concerned workmen for their continuance in higher consolidated remuneration in place of security personnel by disengaging the security agencies from different worksite. According to the management in the present situation especially when the workload of the management has been continuously decreasing day by day and when there is specific direction from the Government to abolish the Engineering Division by disengaging the D. L. R. employees, it is not possible to absorb the concerned workmen in terms of regularisation as claimed by them. On the above backgrounds, the rejection of the claim of the workmen has been prayed for by the management under the present reference.

5. Basing on the above pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Whether the action of the management of B. D. A., Bhubaneswar in not regularising the services of 113 numbers N. M. R. / D. L. R. / *ad hoc* workmen (list enclosed as per Annexure E) is legal and/or justified ?
- (ii) If not, what relief they are entitled to ?

6. The workmen in support of their case have examined one Puspanjali Panda and Sarbeswar Mohanty as W. W. 1 and 2 respectively and have relied upon the xerox copies of the documents such as, copy of the Award in the Industrial Disputes Case No. 2 of 1988, agreement, minutes of discussion, dated the 21st December 1993, letter, dated the 10th January 1994 of the General Secretary of Bhubaneswar Development Authority Workers Association, approval of the Board of Directors in the 50th Board Meeting, copy of the judgement of the Hon'ble Court in O. J. C. No. 7083/1998, copy of the counter affidavit filed in the above O. J. C., copy of the 83rd Board Meeting, copy of Item No. 6/1986, certified copy of the order of the Hon'ble Court passed in O. J. C. No. 8893/1997, copy of the Memo. Office Order, dated the 13th December 1994, letter dated the 27th October 2003, letter of the Executive Engineer, Bhubaneswar Development Authority, dated the 6th June 1995 addressed to the Secretary, Bhubaneswar Development Authority, proceeding before the Conciliation Officer, Office Orders, dated the 19th June 2001, the 9th June 2003 and the 28th December 1999 and copy of the decision of the Board Meeting of the management marked as Exts. 1 to 12 respectively. On the other hand, the management has examined one Shri Sudhansu Bhusan Sarangi as M. W. 1 and has relied upon the xerox copies of the documents such as, authorisation letter, letter of the Government, dated the 7th January 2004, letter, dated the 4th February 2004 of the Government in the Housing and Urban Development Department, letter, dated the 25th April 2003 and the 13th June 2003 of the Government of India, National

Commission for Scheduled Caste and Scheduled Tribe, State Office, Orissa, Office Order, dated the 2nd November 1998 and the judgement of the Hon'ble Apex Court reported in AIR 1994 Supreme Court 1638 marked as Exts. A to G respectively in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The perusal of the evidence of W. W. 1 clearly emerges that she joined in the establishment of the management with effect from the 26th August 1994 as D. L. R. Stenographer but till today her services and the services of other 112 workmen have not been regularised by the management. Although all the workmen are working under the management as D. L. R. employees but in fact they are working as regular employees. It is also in her evidence that about 90 per cent D. L. R. and N. M. R. employees including the employees working under the contractor have been regularised by the management but they have not been regularised till yet. Some of the employees preferred to file Industrial Disputes Case No. 2/1988 and as per the direction of the Industrial Tribunal passed in the above-mentioned Industrial Disputes Case on the 22nd November 1990 the employees who had completed one year of service were made regular by the management. Basing on the said Award an agreement was effected between the management and the employees union wherein it was agreed upon by both the parties that the employees who have completed five years of service they would be regularised. Basing on the principles as per the agreement effected between the management and the employees union, the employees relinquished about Rs. 3 crores with regard to their back wages. Initially the services of 270 N. M. R. employees were made regular as per the Award dated the 22nd November 1990 passed in Industrial Disputes Case No. 2/1988 (Ext. 1) and the agreement effected between the management and the employees union (Ext. 2). She has categorically stated that in the year 1991 the management did not carry out the principles reflected in the agreement and the result was that all the employees including the concerned workmen raised a dispute before the District Labour Officer, Khurda, Bhubaneswar demanding for regularisation of their services. Again on the 21st December 1993 on the request of the employees, the management entered into an agreement vide Ext. 3 and basing on the aforesaid agreement the services of 400 D. L. R. / N. M. R. / *ad hoc* employees were made regular by the management in phase manner. The employees who had completed five years of service as on the 1st January 1994 were also made regular by the management. Since the management accepted the principles reflected in the agreement Ext. 3, the reference was withdrawn and the Board of Directors of the management accepted and approved the agreement Ext. 3 in the 50th Board Meeting vide Ext. 5. Since the management discontinued the principles reflected in the agreement vide Ext. 3. They all approached the management for regularisation of their services but to no avail. W. W. 1 in her evidence has further stated that in the first batch the services of 157 employees have been regularised, and in the second, third and fourth batch the services of 171, 15 and 12 employees respectively have been regularised. Even the management retained 21 outsiders in the year 1991 and in the meantime their services have been regularised by the management. It is also in her evidence

that out of 171 employees already regularised in the second phase, 9 employees namely, Shri Rabi Narayan Mohanty, Shri Kedarnath Bhola, Shri Ashok Kumar Das, Shri Dhirendranath Das, Shri Basudeb Sahoo, Shri Biswa Ranjan Parida, Shri Gagan Bihari Sahoo, Shri Prasanta Kumar Mishra and Shri Naba Kishore Swain had although not completed five years of service as on the 12th December 1994 but the management regularised their services in the year 1994. But subsequently they were reverted to their previous post of D. L. R. in the year 1998. Although the above named 9 employees had received their regular scale of pay from 1994 to 1998 but after their reversion the management had not made any effort for realisation of the excess amount already made to them. After such reversion all the above 9 employees filed O. J. C. No. 7083 of 1998 before the Hon'ble High Court of Orissa, Cuttack and the Hon'ble Court in the aforesaid O. J. C. directed the management vide Ext. 6 to consider their case for regularisation of the services at early date. As per the direction of the Hon'ble Court, the management regularised the services of the above 9 employees and they were also paid their arrear wages. In the said O. J. C. the then Establishment Officer namely, Shri Gobinda Chandra Mishra on behalf of the management had filed a counter affidavit before the Hon'ble Court vide Ext. 7 wherein he had mentioned in Paragraph 8 that the above 9 employees had not completed the stipulated period of five years in the establishment of the management which was mandatorily required for regularisation. It is further stated by W. W. 1 that in 83rd Board Meeting vide Ext. 8 held on the 28th October 2002 the Board of Authorities of the management approved for regularisation of the services of the above named 9 employees in view of the direction of the Hon'ble Court in the aforesaid O. J. C. It was also decided by the Board of Authorities that the services of the rest of the employees would be made regular and in this connection the Board of Authorities decided to constitute a Committee to prepare a gradation list for regularisation of the services of the rest of the employees and to submit a report within 60 days. It has been mentioned in the Item No. 64 that although the above employees were junior but still then the Board of Authorities approved for regularisation of their services in view of the direction of the Hon'ble Court. In 86th Board meeting the Board of Authorities approved for regularisation of existing D. L. R. employees of Scheduled Caste and Scheduled Tribe categories those who have completed three years of service vide item No. 6 already marked as Ext. 9. According to the said witness the action of the management is not regularising their services in spite of the agreement, direction of the Hon'ble Court and Industrial Tribunal, Bhubaneswar was illegal and unjustified for which they have now prayed for regularisation of their services since they have completed five years of service as per the agreement vide Ext. 3. She has been cross-examined by the management at length but after carefully examining the evidence in cross-examination it is seen that nothing material and substantial has been elicited so as to disbelieve and discard her evidence. Rather the evidence of W. W. 1 in cross-examination clearly goes to show that in spite of the agreement effected between the parties and despite the direction of the Hon'ble Court in O. J. C. No. 7083 of 1998 as well as the Award of the Industrial Tribunal in Industrial Disputes Case No. 2/1988 the management has not regularised the services of the concerned workmen although they have completed the stipulated period of service. Similar statement is also noticed in the evidence of W. W. 2. In his evidence he has clearly stated that he has been working as Telephone Attendant on D. L. R. basis since the 1st June 1990 but his services have not yet been

regularised by the management although the services of other three employees who are working with him have been regularised. Being in the capacity of Vice-President of the Bhubaneswar Development Authority Workers Association he filed O. J. C. No. 8893 of 1997 before the Hon'ble Court along with other 31 employees but in view of the principles decided in O. J. C. No. 7083 of 1998 vide Ext. 6 and in view of the pendency of the present case, they all withdrew the above O. J. C. vide Ext. 10. During pendency of the aforesaid O. J. C. out of 32 employees 17 employees were made regular. Similarly the services of the rest employees were regularised during pendency of O. J. C. No. 10309 of 1999. Even the services of 9 employees were regularised by the management in view of the direction given by the Hon'ble Court in O. J. C. No. 7083 of 1998. He has further stated that although the management assured to regularise their services within two months vide letter No. 6912, dated the 27th October 2003 under Ext. 13 but to no effect and no regularisation has been made till yet. He has categorically stated that the employees namely Shri Ramesh Chandra Muduli and five others who were working under a contractor were also made regular by the management. But in spite of the proceeding vide Ext. 15 initiated by the Conciliation Officer with regard to the regularisation of their services, the management has not regularised their services, till yet. It is also in his evidence that in view of the 50th Board Meeting more than 400 employees were made regular but their services have not yet been regularised by the management. Since the management has not regularised their services as yet despite the direction of the Hon'ble Court even though they have completed stipulated period of service as per the principles decided in the Board Meeting they have now prayed for regularisation of their services. The management during cross-examination has not elicited anything material so as to discard his evidence. Rather the evidence in cross-examination clearly shows that the management has not yet regularised their services despite the direction of the Hon'ble Court and the Tribunal and the agreement effected between the management and the Bhubaneswar Development Authority Employees Union.

8. The perusal of the evidence of M. W. 1, Shri Sudhansu Bhusan Sarangi clearly emerges that basing on the Award of the Industrial Tribunal, Bhubaneswar in Industrial Disputes Case No. 2/1988 vide Ext. 1 about 665 employees were made regular. In the said Award the Industrial Tribunal has directed the management to regularise the services of D. L. R. / N. M. R. employees who have completed one year of service. M. W. 1 admits in his evidence that the management accepted the said Award and did not prefer to file any appeal in the higher forum. Rather the management accepted both the agreements vide Exts. 2 and 3 in 50th Board Meeting vide Ext. 5. Accordingly the management agreed in principles to regularise the concerned workmen working under the management vide Ext. 15. He further admits in his evidence that as per the orders of the Hon'ble Court in O. J. C. No. 7083/1998 vide Ext. 6 the management regularised the services of 9 employees but has not regularise the services of 113 D. L. R. employees (concerned workmen) even though they have completed more than five years of service. It is also in his evidence that in 83rd Board Meeting vide Ext. 8 the management decided to consider the case of the concerned workmen within 60 days by finalising their seniority in the final gradation list. Although the seniority list has been prepared but the management has neither made any endeavour nor any effort to regularise the services

of the concerned workmen. In his evidence M. W. 1 has clearly stated that although the Board of Directors in its 50th Board Meeting vide Ext. 7 have decided in principles to regularise the services of all N. M. R. / D. L. R. / *ad hoc* employees but till today the management has not taken any effective steps to consider their case. According to him as there was no sufficient work for the regular employees it is not possible to regularise the services of the concerned workmen in their respective services. Since the financial position of the management is not sound at present it is not possible to regularise the services of the concerned workmen.

9. Both the management and the workmen have adduced evidence in support of their respective cases. Both the parties have also relied upon certain documents in order to establish their respective cases. It is an admitted fact that the Industrial Tribunal in the Award dated the 22nd November 1990 passed in Industrial Disputes Case No. 2/1988 have given direction to the management to regularise the services of the N. M. R. employees working under the management continuously for more than one year and to achieve this the Bhubaneswar Development Authority should prefer a rational scheme within three months from the date of the Award and to regularise the services of the N. M. R. employees on the basis of seniority-*cum*-suitability. The test of suitability should not be any examination or interview but physical infirmity shall mainly be the test of suitability. It is also an admitted fact that against the said Award passed in the aforesaid Industrial Disputes Case the management has preferred not to file any appeal in the higher forum. Similarly the Hon'ble Court in O. J. C. No. 7083/1998 have given direction for regularisation of the services of 9 employees working under the management since they have completed five years of service directly under the Bhubaneswar Development Authority. In this respect the evidence already led through M. W. 1 clearly goes to show that the management despite the direction of the Hon'ble Court, Industrial Tribunal and the principles decided in 50th, 83rd and 86th Board Meeting has neither made any effort nor any endeavour to regularise the services of the concerned workmen and such action of the management, in my view, was illegal and unjustified. It is an undisputed fact between the parties that basing on the Award dated the 22nd November 1990 passed in Industrial Disputes Case No. 2/1988 the agreements vide Exts. 2 and 3 have been effected wherein it has been agreed upon by the parties that the services of the N. M. R. / D. L. R. / *ad hoc* employees working under the management would be made regular those who have completed five years of services. In 50th, 83rd and 86th Board Meeting the principles to regularise the services of N. M. R. / D. L. R. / *ad hoc* employees have been decided but despite the principles decided in the aforesaid meeting the management has not regularised the services of the concerned workmen till yet which, in my view, are in complete violation of the agreement as well as the principles decided in the aforesaid Board Meetings. Apart from that it is admitted by M. W. 1 that the management despite the direction of the Hon'ble Court has not regularised the services of the concerned workmen although they have completed five years of service. In 83rd Board Meeting it has been decided by the authority to consider the case of the concerned workmen for regularisation of their services within 60 days after finalising their seniority in the final gradation list but no step has yet been taken to regularise their services even though the seniority list has been prepared in this respect. The management has taken a stand before this Court that due to reduction of workload and financial

crisis it is not at all possible to regularise the services of the concerned workmen. But in this respect no cogent material is placed before me to come to a definite conclusion that there is reduction of workload and financial crisis in the Bhubaneswar Development Authority. The oral evidence in this respect can not be regarded as sufficient evidence to come to the conclusion that there is reduction of workload and financial crisis in the Bhubaneswar Development Authority. Therefore, the plea taken by the management is without substance. Rather it is clearly evident from the evidence already tendered by the parties that the management despite the direction of the Hon'ble Court and Industrial Tribunal and the principles decided and agreed upon by and between the parties has not yet regularised the services of the concerned workmen. On the whole, after careful consideration of the materials available on record and keeping in view the observation of the Hon'ble Court in O. J. C. No. 7083/1998 and the Award of the Industrial Tribunal dated the 22nd November 1990 in Industrial Disputes Case No. 2/1988, the agreements vide Exts. 2 and 3 and the principles decided in 50th, 83rd and 86th Board Meetings of the Board of Directors of the management. I am of the considered view that the action of the management is not regularising the services of the concerned workmen is illegal and unjustified. In that view of the matter, the workmen concerned are entitled to the relief of regularisation as prayed for.

Both the above issues are answered accordingly.

10. Hence it is ordered :

That the action of the management of Bhubaneswar Development Authority, Bhubaneswar is not regularising the services of 113 numbers of N. M. R. / D. L. R. / *ad hoc* workmen is illegal and unjustified. The above 113 workmen are entitled for regularisation of their respective services from the date they have completed five years of service in respect of general category of workmen and three years of service in respect of the Scheduled Caste and Scheduled Tribe workmen. The management is directed to consider the case of the concerned 113 workmen for regularisation at an early date.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
30-12-2004
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
30-12-2004
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
D. MISHRA
Under-Secretary to Government